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No. 80-1948

In the Supreme Court of the United States

OCTOBER TERM, 1980

JOAN FISCHER WRIGLEY,

Petitioner,

vs.

WILLIAM WRIGLEY,

Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE WISCONSIN COURT OF APPEALS

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INTRODUCTION

In her petition for certiorari, Mrs. Wrigley has argued that the decision of the Wisconsin Court of Appeals should be reviewed because it is in direct conflict with this Court's holdings in *Cook* v. *Cook*, 342 U.S. 126 (1951) and *Johnson* v. *Muelberger*, 340 U.S. 581 (1951). The Wisconsin annulment judgment merits review by this Court not only because it affects Joan Wrigley, who lived as William's wife for some six and one-half years, but also because it represents an erosion of certain fundamental safeguards provided by the full faith and credit clause of the Constitution.

If a state court is free to disregard clearly established guidelines concerning collateral review as set forth by our highest Court, the intricate and time-honored fiber of our federal system is jeopardized. Particularly in the area of domestic relations law, which constitutes many citizens' sole involvement with our judicial processes, it is critically important that the finality of state court rulings be predictable and uniform. Only in certain narrow circumstances, as defined by this Court, may a state refuse to honor the decrees of a sister state. Nothing in Mr. Wrigley's brief establishes that such circumstances were present in this case. Nothing in his brief refutes the fact that the Wisconsin Courts have crossed permissible bounds in annulling the Wrigley marriage.

William Wrigley has attempted to circumvent this Court's decisions in *Cook* and *Johnson* by casting Mrs. Wrigley's objection to the judgment of the Wisconsin court as either: (1) a dispute over factual issues resolved adversely to her on the question whether she and her first two husbands "appeared" in the two Alabama divorce proceedings; or (2) a dispute over the correct interpretation to be given to Alabama case law. Mr. Wrigley's arguments, however, fail to recognize that whether a party "appeared" in an earlier proceeding is a legal question, not a factual one. He also fails to acknowledge that the Wisconsin Court of Appeals did not base its decision on an application of Alabama law. Indeed, the Court of Appeals failed to cite a single Alabama decision.

ARGUMENT

I. THE PETITION ASKS THE COURT TO REVIEW A PURELY LEGAL ISSUE, NOT A FACTUAL ONE.

In *Cook*, this Court ruled that if both spouses appear either generally or specially in a divorce proceeding, the resulting decree is entitled to full faith and credit. *Cook* v. *Cook*, *supra* at 128. As evidenced by the certified copies

of the Alabama judgments submitted by Mrs. Wrigley in Wisconsin, both Devine and Dexheimer entered general appearances in the Alabama proceedings (App. 46-47; 55-56); they "appeared" and the resulting decrees are therefore entitled to full faith and credit.

Mr. Wrigley attempts to circumvent the holding of *Cook* by arguing that whether a party "appeared" in the prior proceeding is a factual question that may be relitigated in a later collateral attack. He argues that because the Wisconsin court "*found as fact* that neither Dexheimer nor Devine appeared or participated in either proceeding" the decrees are not entitled to recognition in Wisconsin. (Resp. Br. at 14, emphasis added.)

Mr. Wrigley misinterprets the language used by this Court in *Cook* and other cases. *See, e.g., Johnson* v. *Muelberger,* 340 U.S. 581, 587 (1951); *Sherrer* v. *Sherrer,* 334 U.S. 343, 355-56 (1948); *Coe* v. *Coe,* 334 U.S. 378, 384 (1948). Those cases do not hold that the issue whether a party "appeared" in a proceeding is a factual question to be decided by determining whether the party physically took a responsive pleading to the clerk's office and filed it. Nor do they hold that an "appearance" requires the party to be physically present at the courthouse during the proceedings. (See Resp. Br. at 2, 4.) *Cook* v. *Cook,* 342 U.S. 126, 127-28 (1951); *Johnson* v. *Muelberger,* 340 U.S. 581, 582 (1951); *Hartenstein* v. *Hartenstein,* 18 Wis. 2d 505, n.2, 118 N.W.2d 881, 885 n.2 (1963).* Rather, those cases make clear that the question whether a party "appeared" for purposes of due process is a legal one. The judgment of the Wisconsin court cannot be insulated from review

* The foonote in *Hartenstein* explains that an examination of the official transcript in *Johnson* v. *Muelberger* disclosed that the defendant spouse in that case did not appear physically, but only by counsel.

because it attempted to cast a finding of fact as a legal conclusion.

Secondly, Mr. Wrigley attempts to argue that the two Alabama decrees were entered *ex parte* because they were not entered after "traditional adversary proceedings." (Resp. Br. at 14-16.) Whatever "traditional adversary proceedings" may be, this Court has never established a minimum level of adversial activity that must be achieved in order to render a decree bilateral and entitled to full faith and credit. Legal proceedings are frequently simply an avenue for changing legal relationships; they need not always be contentious. *See, e.g.,* Uniform Marriage and Divorce Act § 303 (providing for "no-fault" divorce).

Devine and Dexheimer physically executed the responsive pleadings filed on their behalf in the Alabama proceedings (App. 19, Finding 12, App. 21, Finding 27), and did so knowingly and voluntarily. These facts are uncontroverted. Both men appeared in the proceedings by filing their general appearances and submitting themselves to the court's jurisdiction. (App. 46-47, 55-56.) They are bound, as a matter of law, by the judgments subsequently entered, and they are precluded from attacking those judgments now, just as Mr. Wrigley is.

Finally, under the guise of restating the facts of the case, Mr. Wrigley attempts to support the Wisconsin judgment by making allegations of judicial misconduct on the part of the judge who granted the Dexheimer decree. (Resp. Br. at 5-6.) At the annulment trial, Mr. Wrigley introduced evidence that F. O. Whitten, the judge who granted the Dexheimer decree in 1966, was convicted of mail fraud in 1970 for issuing blank divorce decrees. Mr. Wrigley, however, adduced no evidence that the Dexheimer decree was one of those issued in blank. Indeed, the trial

court specifically found that "the evidence does not sustain the charge that the Dexheimer decree was one of these issued in blank to attorneys by Judge Whitten."* (App. 6.)

Contrary to the implications in Mr. Wrigley's brief, no evidence was adduced at trial that either of Mrs. Wrigley's prior divorce decrees was fraudulently obtained. The "evidence" set forth in Mr. Wrigley's statement of the case (Resp. Br. at 5), therefore, is absolutely irrelevant to the issues before this Court and should be disregarded.

II. THE DEVINE AND DEXHEIMER DECREES ARE NOT VOID UNDER ALABAMA LAW.

Apparently Mr. Wrigley recognizes that the ruling of the Wisconsin Court of Appeals that the decrees were entered *ex parte* is not a defensible basis for upholding the annulment decree, because he attempts to rely on a rationale not used by the Wisconsin Court of Appeals. He argues that the decrees are void under Alabama law, and therefore not entitled to faith and credit in Wisconsin. (Resp. Br. at 9-10.) Mr. Wrigley, however, fails to acknowledge that the Wisconsin Court of Appeals did not base its decision on Alabama law, and failed to cite a single Alabama case. Moreover, it is clear that the Devine and Dexheimer decrees are not void under Alabama law. *See, e.g., Aiello* v. *Aiello,* 272 Ala. 505, 510, 133 So. 2d 18, 21 (1961) (insufficiency of evidence to support a decree does not make decree void on its face).

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* Moreover, Judge Whitten was convicted for selling blank decrees to an attorney named John Ike Griffith. Griffith was not connected in any way to the Dexheimer proceedings. (App. 5-6.)

Mr. Wrigley attempts to rely on *Hartigan* v. *Hartigan*, 272 Ala. 67, 128 So. 2d 725 (1961), to support his argument that the Devine and Dexheimer decrees are void under Alabama law. (Resp. Br. at 10.) The unique facts of *Hartigan*, however, have no application to the facts of this case.* Moreover, subsequent Alabama decisions have conclusively put to rest any expansive reading of *Hartigan*. *See Weisner* v. *Weisner*, 282 Ala. 626, 628, 213 So. 2d 685, 686 (1968); *Multer* v. *Multer*, 280 Ala. 458, 462, 195 So. 2d 105, 108 (1966); *Shapiro* v. *Shapiro*, 280 Ala. 115, 117-18, 190 So. 2d 548, 549-50 (1966); *Aiello* v. *Aiello*, 272 Ala. 505, 509-10, 133 So. 2d 18, 21 (1961); *see also Yerger* v. *Cox*, 281 Ala. 1, 198 So. 2d 282 (1967).

Unsurprisingly, every court that has considered the validity of an Alabama divorce decree since *Weisner* and *Yerger* has upheld its validity. *See Donner* v. *Donner*, 302 So. 2d 452 (Fla. App. 1974) *cert. denied*, 314 So.2d 151 (Fla. 1975); *Kingdon* v. *Foster*, 238 Ga. 37, 230 S.E.2d 855 (1976), *cert. denied*, 431 U.S. 916 (1977); *Alikonis* v. *Alikonis*, 36 Ill. App. 3d 159, 343 N.E.2d 161 (4th Dist. 1976); *see also Tippin* v. *Tippin*, 148 Conn. 1, 166 A.2d 448 (1960).

Mr. Wrigley attempts to distinguish these cases by noting that they were not annulment actions. (Resp. Br. at 12 n.10.) Both he and the trial court attempted to distinguish between decisions that "set aside" a prior divorce decree and those that merely "annul" a marriage.

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* Unlike the Hartigans, neither Devine, nor Dexheimer, nor Mrs. Wrigley has ever returned to the very Alabama court that granted their divorce decrees with statements that their own testimony was false, while simultaneously asking the court for affirmative relief from the judgment. Unlike the Hartigans, neither Devine nor Dexheimer appeared as parties before the Wisconsin court. Even Mrs. Wrigley was not there by choice; rather she was there as a defendant sued by her husband for an annulment.

(App. 14; Resp. Br. at 12-13.) None of the decisions cited above, however, purported to make any such distinction; nor can one be made.

Incredibly, respondent asserts that the Wisconsin judgment "had no effect on [the Devine and Dexheimer] decrees." (Resp. Br. at 13.) Mr. Wrigley appears to have the same limited view of the extraterritorial effect of the judgment of the Wisconsin court as he does of the judgments of the Alabama courts. The effect of the Wisconsin judgment cannot be limited to the geographical boundaries of that State. Unless reversed by this Court, the Wisconsin judgment is entitled to full faith and credit in every state of the Union. As Mr. Wrigley points out in his brief, Wisconsin law provides for an annulment when a wife remarries despite the fact that she has a prior husband living from whom she is not divorced. Wis. Stat. § 247.02(3) (1976). (Resp. Br. at 6.) The Wisconsin trial court annulled the Wrigley marriage on that basis, finding that Mrs. Wrigley had an undivorved spouse living at the time of her marriage to William Wrigley. (App. 16.) Unless this Court reverses, the Wisconsin judgment is *res judicata* and Mrs. Wrigley is collaterally estopped to deny the necessary factual bases upon which the decree is founded. If the judgment stands, it will nullify the effect of the Alabama decrees and Mrs. Wrigley will be considered legally married, presumably to Devine.

CONCLUSION

The issues raised by the Wisconsin court's annulment decree touch more than just the parties before the Court. Given the mobility of our society and the increasing number of persons who end their marriages with uncontested divorces and eventually remarry, it will become more and more common for state courts to pass upon the validity of divorce decrees rendered by sister states. This process must be conducted within the firmest boundaries, applying the strictest standards.

For all the reasons and authorities cited above, petitioner Joan Fisher Wrigley respectfully requests that this Court grant the writ of certiorari and reverse the decision of the Wisconsin Court of Appeals.

Respectfully submitted,

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